

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 14th January, 2010
Date of Order: February 02, 2010

CM(M) No. 810/2009

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02.02.2010

Akshay Kumar

... Petitioners

Through: Mr.R.P.Luthra, Advocate

Versus

Ram Prasad Malik

... Respondent

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

By this petition under Article 227 of the Constitution of India, the petitioner has assailed an order dated 30th July, 2009 whereby an application of the petitioner under Order 18 Rule 17 and 17A CPC for recalling the witnesses for cross examination was dismissed.

2. Brief facts relevant for the purpose of deciding this petition are that on 21st May, 2009 the case was fixed before the trial Court for cross examination of PW 1. The defendant counsel failed to cross examine the witness and the cross examination was closed. Thereafter, this application under Order 18 Rule 17 and 17A CPC was made taking a plea that the matter between the parties was settled but plaintiff backed out from settlement, therefore witness could not be cross examined. It was also stated that defendant failed to understand the proceedings and failed to avail the opportunity to cross examine PW 1 and hence the application.

3. The trial Court went through the history of the proceedings and

found that when the matter was listed on 23rd March, 2009 for cross examination of this witness, the same plea was taken by the defendant. The defendant wanted the cross examination to be deferred on the ground that compromise talks were going although the counsel for the plaintiff vehemently denied that any compromise talks had ever taken place and opposed the adjournment on this ground. However, the matter was adjourned subject of cost of Rs.2000/- and was listed for cross examine on 21st May, 2009. On 21st May 2009 again the witness was not cross examined, the defendant appeared but his Counsel did not appear, the Court, therefore closed the cross examination. Prior to 21st May, 2009, nine opportunities were given for cross examination of this witness. Issues were framed on 16th February, 2006 and thereafter this PW 1 had been appearing repeatedly for cross examination but defendant did not cross examine him on one or the other ground. The trial Court found that the application was another delaying tactics and dismissed the application.

4. When this petition came up for hearing before this Court, the Court had on the very first date of hearing found the petition seemed to be frivolous and asked the petitioner to deposit cost of Rs.20,000/- which may be eventually imposed on the petitioner. The petitioner deposited this Court.

5. It is stated in the petition that on the date fixed, the petitioner had come to the Court with the impression that respondent would settle the matter for a sum of Rs.1,30,000/- but the respondent denied any settlement and petitioner thus was not in a position to cross examine the witness. It is stated that in case the petitioner was not allowed to cross examine the witness and lead evidence, the petitioner would suffer an irreparable loss.

6. Looking at the conduct of the petitioner and the manner the

petitioner had dragged the case and sought adjournments on false pretexts the only right thing which the trial court could do was to dismiss the application of the petitioner of recalling the witness for cross examination. The trial Court thus, rightly dismissed the application. If in a small suit for recovery, the witness has to appear nine times for his cross examination, there cannot be more unjust situation and travesty of justice.

7. I find no force in the petition and dismiss it with cost for Rs.10,000/-. Out of cost of Rs.20,000/- deposited in the Court, Rs. 10,000/- be returned to the petitioner and cost of Rs.10,000/- imposed, be deposited with Delhi High Court Legal Services Committee.

February 02, 2010
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SHIV NARAYAN DHINGRA, J.